

Message Text

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NSAE-00 NSC-10 PA-04 PRS-01 SPC-03 SS-20 USIA-15

SAM-01 CEQ-02 COA-02 COME-00 EB-11 EPA-04 NSF-04

SCI-06 FEA-02 ACDA-19 AEC-11 AGR-20 DOTE-00 FMC-04

INT-08 JUSE-00 OMB-01 DRC-01 /266 W

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TO SECSTATE WASHDC 2822

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E.O. 11652: GDS

TAGS: PFOR PBOR UN

SUBJ: LAW OF THE SEA--GROUP OF 5 DISCUSSION

OF CONFERENCE PROCEDURES

1. SUMMARY: GROUP OF 5 MET 22 FEB TO DISCUSS LOS
CONFERENCE RULES AND PROCEDURES IN ANTICIPATION OF
AMERASINGHE CONSULTATIONS BEGINNING WEEK OF 25 FEB.
UK, FRANCE AND JAPAN AGREED TO TEXT SUGGESTED BY US
FOR INCORPORATING GENTLEMEN'S AGREEMENT INTO A CONFERENCE
RESOLUTION ADOPTING THE RULES OF PROCEDURE FOR THE
CONFERENCE; USSR SAID IT NOT NOW PREPARED TO DO SO.
GROUP ALSO DISCUSSED POSSIBILITIES OF ESTABLISHING
IN THE RULES A MECHANISM FOR DETERMINING WHETHER ALL
EFFORTS TO ACHIEVE CONSENSUS HAVE BEEN EXHAUSTED (PRE-
CONDITION TO VOTING); FRANCE AND, WITH SLIGHTLY
LESS EMPHASIS, UK AND JAPAN STRESSED THAT NO MECHANISM
CAN PRODUCE PROTECTION AS GREAT AS GOOD FAITH IMPLI-
MENTATION OF GENTLEMEN'S AGREEMENT AND URGED THAT EFFORT
TO WRITE A PRECISE MECHANISM INTO THE RULES COULD
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OPERATE AGAINST MARITIME POWER INTERESTS. FRANCE, UK

AND JAPAN THOUGHT PROVISION FOR FIXED COOLING-OFF PERIOD BEFORE ANY VOTE TAKEN COULD ALSO BACKFIRE. END SUMMARY

2. DETAILS. AMB STEVENSON SUMMARIZED HIS DISCUSSION WITH AMERASINGHE EARLIER IN WEEK (USUN 558) AND US-CANADIAN DISCUSSIONS WHICH HAD LED TO RE-DRAFT OF AUSTRALIAN PROPOSAL TO AMEND RULE 37 ON DECISION DEFERRAL (COOLING-OFF PERIOD), COPIES OF WHICH WE GAVE OUT.

3. JAPANESE DREW ATTENTION TO AFGHAN/NEPAL/ZAMBIA PROPOSAL (62/19) TO INCLUDE IN RULE 38 PROVISION THAT "DECISIONS OF THE CONFERENCE ON ALL MATTERS OF SUBSTANCE SHALL BE TAKEN BY WAY OF CONSENSUS AND THERE SHALL BE NO VOTING ON SUCH MATTERS UNTIL ALL EFFORTS AT CONSENSUS HAVE BEEN EXHAUSTED". (UNDER THIS PROPOSAL, WHICH STATES THAT IT HAS BEEN "ENDORSED BY THE LAND-LOCKED COUNTRIES OF THE GROUP OF 77", CONTENTS OF FORMER RULE 38 ON ONE NATION ONE VOTE WOULD BE INTRODUCED BY "IN THE EVENT OF FAILURE TO REACH AGREEMENT BY CONSENSUS, ETC.". ALL AGREED THAT AFGHAN/NEPAL/ZAMBIA AMENDMENT WOULD BE SUPPORTIVE OF OUR EFFORT TO GET INCORPORATION OF GENTLE-MEN'S AGREEMENT IN THE RESOLUTION ADOPTING THE RULES. HOWEVER, JAPAN, FRANCE, UK AND US IN COURSE OF DISCUSSION EXPRESSED PREFERENCE FOR INCORPORATION OF THE GA IN A CONFERENCE RESOLUTION RATHER THAN DIRECTLY INTO THE RULES OF PROCEDURE. AMONG OTHER FACTORS IT WAS NOTED THAT CONSENSUS SHOULD BE A PRINCIPLE SUPERIOR TO AND UNDERLYING ALL OF THE CONFERENCE RULES, AND THAT THE AFGHAN/NEPAL/ZAMBIA PROPOSAL WOULD APPLY ONLY TO DECISION-MAKING IN PLENARY, NOT TO MAIN COMMITTEES. ON OTHER HAND, INCLUDING THE GA DIRECTLY IN THE RULES WOULD BE CLEARLY PREFERABLE TO THE ORIGINAL NON-ALIGNED PROPOSAL TO RELEGATE IT TO AN ANNEX TO THE RULES.

4. STEVENSON'S QUESTION AS TO THE ACCEPTABILITY OF THE TEXT PROPOSED BY US (USUN 295) FOR THE RESOLUTION INCORPORATING THE GA AND ADOPTING THE RULES PRODUCED THE FOLLOWING REACTIONS: FRANCE (JEANNEL) THOUGHT THE TEXT EXCELLENT AND BELIEVES NO EFFORT SHOULD BE MADE TO INCLUDE IN THE RESOLUTION ANY "MECHANISM" FOR DETERMINING WHETHER CONFIDENTIAL

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ALL EFFORTS AT CONSENSUS HAVE BEEN EXHAUSTED (E.G., BY ADDING "INCLUDING SUCH EFFORTS AT THE PRESIDENT OR CHAIRMAN MAY DEEM APPROPRIATE") HE THEORIZED THAT NO "MECHANISM" FOR CONSULTATION (AND, HE SAID, NO QUALIFIED MAJORITY VOTING RULE) COULD GIVE AS GOOD PROTECTION AS MAJOR MARITIME POWER INSISTENCE ON GOOD FAITH ADHERENCE BY THE CONFERENCE TO THE GA AND ITS CONSENSUS PRINCIPLES. FOR THIS REASON, FRANCE CONSIDERS REITERATION OF THE GA,

AS IN THE US TEXT, INDISPENSIBLE AND, BY CONTRAST, ATTACHES LITTLE OR NO IMPORTANCE TO EFFORTS TO ACHIEVE MORE QUALIFIED MAJORITY REQUIREMENTS FOR VOTING THAN THOSE PROPOSED BY THE SECRETARIAT ALONG TRADITIONAL INTERNATIONAL CONFERENCE LINES. INDEED, JEANNEL SAID, FRANCE COULD ACCEPT THE US GA RESOLUTION TEXT TOGETHER WITH THE RULES AS PROPOSED BY SECRETARIAT WITHOUT ANY AMENDMENT WHATEVER.

5. UK (DUDGEON) ALSO AGREED TO US TEXT AND LARGELY ECHOED FRENCH ANALYSIS; DUDGEON SAID UK WOULD SUPPORT US PROPOSALS TO REQUIRE MAJORITY OF REPRESENTATIVES PARTICIPATING IN THE PARTICULAR SESSION OF THE CONFERENCE FOR ANY DECISION TO BE ADOPTED BY VOTING, BUT LONDON WOULD NOT THINK FAILURE TO OBTAIN THIS AGREEMENT WOULD BE SERIOUS. JAPAN (OGISO) SAID US TEXT WAS ACCEPTABLE IF OTHERS IN GROUP OF 5 AGREE; OGISO ADDED THAT RECENT JAPANESE PROPOSAL FOR AMENDMENT TO RULE 37(62/16) ON DEFERRAL OF DECISION-MAKING WOULD BECOME REDUNDANT IF US GA RESOLUTION TEXT WERE ACCEPTED.

IN BROAD STATEMENT OF SOVIET VIEW, SMIRNOV SAID THAT FOR THE MOMENT SOV DEL WILL CONTINUE TO WORK FOR GOAL THAT ALL CONFERENCE DECISIONS SHOULD BE TAKEN BY CONSENSUS, THAT VOTING SHOULD TAKE PLACE ONLY IN EXCEPTIONAL CASES AND ONLY WHERE THERE IS A NEAR-CONSENSUS ON THE DESIRABILITY OF A VOTE, AND THAT THE OPTIMUM "MECHANISM" FOR DETERMINING WHETHER ALL EFFORTS AT CONSENSUS HAVE BEEN EXHAUSTED WOULD BE TO PROVIDE IN THE GA RESOLUTION A REQUIREMENT FOR CONSULTATIONS AS AMONG THE O

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6. FURTHER ON THE QUESTION OF "MECHANISM", STEVENSON SAID THAT WHATEVER THE MERITS OF THE FRENCH ANALYSIS, NEGOTIATIONS IN DECEMBER HAD SHOWN IT WOULD NOT BE POSSIBLE TO INCORPORATE AN AGREED "MECHANISM" IN THE GA RESOLUTION AND THAT AN ATTEMPT TO INCORPORATE ONE WOULD PREJUDICE, PERHAPS CRITICALLY, THE GA RESOLUTION EFFORT. HE, JEANNEL AND DUDGEON RECALLED SUCH FACTORS AS NON-ALIGNED UNWILLINGNESS TO VEST CONFERENCE PRESIDENT AMERASINGHE WITH THE POWER TO DETERMINE WHEN CONSENSUS EFFORTS HAD BEEN EXHAUSTED, OPPOSITION TO REQUIRING THAT CLOSURE OF DEBATE IN A MAIN COMMITTEE SHOULD REQUIRE REFERENCE TO PLENARY, AND FACT THAT GENERAL COMMITTEE COMPOSITION MAKES IT A NOT EXPECIALLY DESIRABLE CANDIDATE FOR A "MECHANISM" EVEN IF OTHERS WERE TO AGREE.

7. ON COOLING-OFF PERIOD PROPOSALS SUCH AS THE CANADIAN REVISION OF THE AUSTRALIAN AMENDMENT TO RULE 37 CONCERNING DEFERRAL OF VOTING, JAPAN, UK AND FRANCE OPPOSED EFFORTS TO OBTAIN WHAT THEY CONSIDERED UNDUE PRECISION IN THE RULES. OGISO, DUDGEON AND JEANNEL THOUGHT

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FIXING A FINITE PERIOD COULD OPERATE AGAINST GROUP OF 5 INTERESTS BECAUSE IT WOULD SUGGEST TO EXTREMISTS THAT ALL THEY NEED DO IS SIT OUT WHATEVER PERIOD HAS BEEN SET AND THEN PROCEED TO THE VOTE; THE US GA RESOLUTION, IF AGREED TO, PLUS MARITIME POWER INSISTENCE ON GOOD FAITH ADHERENCE BY THE CONFERENCE TO THE GA, WOULD OFFER SIGNIFICANTLY BETTER PROTECTION AGAINST PREMATURE VOTING.

8. ON US PROPOSAL TO UP 2/3 MAJORITY TO 2/3 MAJORITY OF REPRESENTATIVES PARTICIPATING IN THE CONFERENCE, STEVENSON NOTED THAT WHAT WE PROPOSE IS A 2/3 VOTE OF REPRESENTATIVES PARTICIPATING IN THE PARTICULAR SESSION OF THE CONFERENCE (AS IN USUN 558); OTHERS AGREED. FRENCH AND BRITISH REPEATED THEIR VIEW THAT US SHOULD CONTINUE TO SEEK AGREEMENT ON THIS BUT FAILURE TO ACHIEVE IT WOULD NOT BE SIGNIFICANT. SMIRNOV SAID USSR COULD AGREE TO US PROPOSAL AS A LAST RESORT; FOR THE MOMENT THEY WOULD STICK TO THE SOVIET PROPOSAL FOR 9/10.

9. IT WAS NOTED THAT INDICATIVE VOTING HAS AROUSED

CONSIDERABLE OPPOSITION. STEVENSON COMMENTED INDICATIVE VOTING MIGHT BE USEFUL BUT THAT WE WOULD NOT PLAN TO EXPEND UNDUE CAPITAL TO ACHIEVE IT.

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